

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2520

SPONSOR: Regulated Industries Committee and Senator Diaz de la Portilla

SUBJECT: Alcoholic Beverage Licenses

DATE: April 10, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill provides procedures for the issuance of a revoked quota alcoholic beverage license by allowing it to be put in a double random drawing under s. 561.19, F.S. It also provides enforcement protections for a person holding a perfected lien or security interest in the revoked license.

The bill amends s. 561.422, F.S., to add the requirement that nonprofit civic organizations must present a building permit and zoning permit upon the filing of an application to sell alcoholic beverages, and to require that all net profits from sales of alcoholic beverages collected during the permit period must be retained by the nonprofit civic organization.

The bill amends s. 561.65(1), F.S., to provide that a person with a bona fide mortgage, lien, or security interest in a spirituous alcoholic beverage license has a right to enforcement of a lien within 180 days after any order of revocation or suspension, and to bars the issuance of a revoked alcoholic beverage license that is encumbered with a lien or security interest until the 180-day period has elapsed or the enforcement proceeding is final.

This bill prohibits a licensee or the agents, officers, servants and employees of a licensee (licensed under the Beverage Law defined as chapters 562, 563, 564, 565, 567, and 568, F.S.) providing alcoholic beverages to employees younger than 21 years of age, except as authorized pursuant to ss. 562.111 or 562.13, F.S., or permitting a person under younger than 21 years of age to consume alcoholic beverages on the licensed premises. It provides that a violation of this provision is a misdemeanor of the first degree.

The bill substantially amends the following sections of the Florida Statutes: 561.19, 561.422, 561.65, and 562.11.

## II. Present Situation:

The Division of Alcoholic Beverages and Tobacco (“the division”) of the Department of Business and Professional Regulation is the agency authorized to enforce the provisions of the Beverage Law in chs. 562, 563, 564, 567, and 568, F.S.

Section 565.01 defines the words "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to mean:

[T]hat substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

Section 561.01, F.S., defines alcoholic beverages as meaning distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume. An alcoholic beverage containing more than 4.007 percent of alcohol by volume is defined by s.561.01, F.S, as “intoxicating beverage” and “intoxicating liquor.”

### **Quota alcoholic beverage licenses.**

Section 561.20, F.S., places limits on the number of alcoholic beverage licenses that may be issued per county. Section 561.20, F.S., limits the number of licenses in a county to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as quota licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquor to one that does permit their sale. The quota license is the only alcoholic beverages license that is limited in number; all other types of alcoholic beverages licenses are available without limitation. Applications for quota licenses can exceed the number of available licenses.

Section 561.19, F.S., establishes the procedure for granting or denying applications for all alcoholic beverage licenses, including quota licenses. Section 561.19(2)(a), F.S., establishes a double random selection drawing process for quota liquor licenses. Section 561.19, F.S., authorizes the division to conduct double random drawings for quota licenses in only two circumstances:

1. When quota licenses become available by reason of an increase in population in the county, or
2. By reason of a formerly dry county permitting the sale of alcoholic beverages.

The Beverage Law does not authorize the division to issue licenses that fall outside these two categories by the double random drawing process in s. 561.19, F.S. Revoked quota licenses are not subject to the double random drawing process in s. 561.19, F.S., under current law. Revoked quota licenses must therefore be issued to the first qualifying applicant.

A recent decision of an Administrative Law Judge for the Division of Administrative Hearings invalidated a proposed rule of the division that would have authorized the division to include revoked quota licenses in quota drawings under s. 561.19, F.S. The case concerned the division's denial of an applicant's application for 57 previously revoked quota licenses.

**Liens or security interests in alcoholic beverage licenses.**

Section 561.65, F.S., provides for the recording and enforcement of mortgage, lien and security interests in spirituous alcoholic beverages licenses. Section 561.65(4), F.S., requires the person holding the lien or security interest to record the lien or security interest with the division within 90 days of its creation. Section 561.65(1), F.S., requires the division to notify any lienholder with a properly recorded lien or security interest of any pending revocation or suspension.

Section 561.65, F.S., requires that any person with a bona fide mortgage, lien, or security interest in a spirituous alcoholic beverage license "shall have the right to enforcement of a lien against that license within 12 days after any order of revocation or suspension [from the division] for a cause or causes of which the lienholder did not have knowledge or in which he or she did not participate."

Section 561.65, F.S., further provides that its provisions do not affect liens or security interests in spirituous alcoholic beverage licenses existing prior to July 1, 1981.

**Temporary permits by nonprofit organizations.**

Section 561.422, F.S., provides for temporary permits for nonprofit charitable organizations to sell alcohol for consumption on the premises only. The permit period may not exceed 3 days and is subject to any state law or municipal or county ordinance regulating the time for selling alcoholic beverages. Section 561.422 requires the nonprofit organization to file an application and pay a \$25 fee per permit in order to obtain the permit. The division may only issue 3 such permits per year for each nonprofit organization.

**Sale of alcoholic beverages to persons under 21 years of age.**

Section 562.11(1)(a), F.S., provides that it is unlawful to sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume alcoholic beverages on the licensed premises. Anyone convicted of a violation of these provisions is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.

Section 562.111, F.S., provides that it is unlawful for any person under the age of 21 years to have in his or her possession alcoholic beverages. A person under the age of 21 years may possess alcoholic beverages if they are employed under the provisions of s. 562.13, F.S., and acting in the scope of his or her employment. Any person under the age of 21 who is convicted of a violation of this provision is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500. The court is required to direct the Department of Highway Safety and Motor Vehicles to withhold issuance, or suspend or revoke, the person's driver's license or driving privilege as provided in s. 322.056,

F.S. This provision does not apply to the tasting of alcoholic beverages by students over 18 enrolled in a college program where the tasting is for instructional purposes. Persons over the age of 18 may also be employed in the sale, preparation, or service of alcoholic beverages in licensed premises in any establishment licensed by the Division of Alcoholic Beverages and Tobacco or the Division of Hotels and Restaurants in the Department of Business and Professional Regulation.

It is unlawful for any vendor licensed under the Beverage Law to employ any person less than 18 years of age pursuant to s. 562.13, F.S. However, the provisions of this section do not apply to:

- Professional entertainers 17 years of age who are not in school;
- Minors employed in the entertainment industry and who are employed under the procedures established for such employment or who have been granted a waiver from the Child Labor Law;
- Persons under the age of 18 years employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations which have licenses to sell beer and wine for consumption off the premises;
- Any senior high school student with written permission of their principal or any high school graduate employed by a bona fide food service establishment where alcoholic beverages are sold if they do not participate in the sale, preparation, or service of alcoholic beverages and their duties provide training that may lead to advancement in the food service establishments;
- Person under the age of 18 years employed as bellhops, elevator operators, and other duties in hotels that do not work in the portion of the hotel where alcoholic beverages are sold for consumption on the premises;
- Person under the age of 18 years employed in bowling alleys if they do not participate in the sale, preparation, or service of alcoholic beverages;
- Persons under the age of 18 years employed by a bona fide dinner theater whose employment is limited to being an actor, actress, or musician;
- Persons under the age of 18 years who are employed by a theme park as provided in s. 562.02(6), F.S., if they do not participate in the sale, preparation, or service of alcoholic beverages;
- A minor subject to this section, may not be employed if the employment involves nudity on the part of the minor and the nudity is intended as adult entertainment.

Pursuant to s. 561.01, F.S., a “licensee” under the Beverage Law (defined as chapters 562, 563, 564, 565, 567, and 568, F.S.), means a “legal or business entity, person, or persons that hold a license issued by the [Division of Alcoholic Beverages and Tobacco] and meet the qualifications set forth in s. 561.15, F.S.”

Section 561.29, F.S., gives the Division of Alcoholic Beverages and Tobacco the authority to revoke or suspend the license of any person holding a license under the Beverage Law for a “violation by the licensee or his or her or its agents, officers, servants, or employees, on the licensed premises, or elsewhere while in the scope of employment, of any of the laws of this state or of the United States. . . .”

A licensee can be subject to discipline under the penalty guidelines established in rule 61A-2.022, F.A.C. For violation of s. 562.11, F.S., the guidelines provide:

- 1st occurrence - \$1,000 fine and 7-day suspension of license.
- 2nd occurrence - \$3,000 fine and 30-day suspension of license.
- 3rd occurrence – revocation of license.

Agents from the Division of Alcoholic Beverages and Tobacco recently arrested a manager from a Tallahassee establishment on charges of providing alcohol to a minor and providing false information to its agents after a minor allegedly became intoxicated after hours at the establishment and shortly thereafter was involved in a fatal crash. Administrative charges are pending against the establishment. According to the investigating officer from the Tallahassee Police Department, there have been several incidents around the state where employers have allowed underage employees to drink at their establishments while on duty or after hours. There have been occurrences of the underage employee becoming intoxicated and being killed or severely injured in alcohol related automobile crashes. Recent fatalities have also occurred in Jacksonville.

Sections 561.701 through 561.706, F.S., constitute the “Responsible Vendor Act.” Section 561.705, F.S., provides for qualification as a responsible vendor for persons licensed under chapters 561, 563, 564, or 565, F.S., to sell or serve alcoholic beverages. To qualify as a responsible vendor an alcoholic beverage licensee must satisfy manager and employee training requirements as specifically set forth in s. 561.705, F.S. Qualified responsible vendors must also establish a written policy regarding the use of controlled substances on the licensed premises, maintain training records, and post signs regarding the vendors policy against serving or selling alcoholic beverages to underaged persons or the illegal use of or trafficking in controlled substances.

Section 561.706, F.S. exempts qualified responsible vendors from revocation or suspension for an employee’s illegal serving of alcoholic beverages to an underaged person or their illegal use of or trafficking in controlled substances, provided that the employee had completed the applicable training. Section 561.705, F.S., also require that the Division of Alcoholic Beverages and Tobacco to consider responsible vendor qualification in mitigation of violations related to serving or selling alcoholic beverages to underaged persons or the illegal use of or trafficking in controlled substances.

### **III. Effect of Proposed Changes:**

#### **Section 1. License issuance upon approval of division.**

The bill amends s. 561.19(2)(a), F.S., to allow a quota alcoholic beverage license that is revoked after July 1, 2003, to be issued by the double random drawing process authorized by that section.

#### **Section 2. Nonprofit civic organizations; temporary permits.**

The bill amends s. 561.422, F.S., to add the requirement that nonprofit civic organizations must present a building permit and zoning permit upon the filing of an application to sell alcoholic beverages for consumption on the premises only.

The bill also requires that all net profits from sales of alcoholic beverages collected during the permit period must be retained by the nonprofit civic organization.

**Section 3. Mortgagee's interest in license.**

The bill also amends s. 561.65(1), F.S., to provide that any person with a bona fide mortgage, lien, or security interest in a spirituous alcoholic beverage license has a right to enforcement of a lien within 180 days after any order of revocation or suspension from the division for a cause or causes of which the lienholder did not have knowledge or in which he or she did not participate. The current s. 561.64(1), F.S., requires that the lien must be enforced within 12 days of the revocation or suspension.

The bill bars the issuance of a revoked alcoholic beverages license that is encumbered with a lien or security interest until the 180-day period has elapsed or the enforcement proceeding is final.

**Section 4. Selling , giving, or serving alcoholic beverages to person under age 21.**

This bill amends s. 562.11, F.S., to provide that a licensee or the agents, officers, servants and employees of a licensee may not provide alcoholic beverages to a person younger than 21 years of age who is employed by the licensee, except as authorized pursuant to ss. 562.111 or 562.13, F.S. A licensee or the agents, officers, servants, and employees of a licensee may not permit a person younger than 21 years of age to consume alcoholic beverages on the licensed premises. A licensee or the agents, officers, servants, and employees of a licensee who violate this paragraph commit a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding one year and a fine not to exceed \$1,000.

This bill would increase the current penalty for licensees, their agents, officers, servants and employees from the current second degree misdemeanor under s. 562.11(1)(a), F.S., to a first degree misdemeanor for a violation of these provisions.

The bill would name the provisions of s. 562.11(1)(b), F.S., "The Christopher Fugate Act."

**Section 5.**

The bill reenacts s. 561.706, F.S., for the purpose of incorporating the amendment to s. 561.11, F.S.

**Section 6.**

This bill would take effect July 1, 2003.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Applicants for revoked quota alcoholic beverage licenses would have to apply for the double random drawing process authorized by s. 567.19, F.S. Persons with a lien or security interest in alcoholic beverage licenses would be permit 180 days to enforce their interest in the license.

Nonprofit charitable organizations would have to present a building permit and zoning permit upon the filing of an application to sell alcoholic beverages. Nonprofit charitable organizations would have to retain all net profits from sales of alcoholic beverages collected during the permit period.

**C. Government Sector Impact:**

The bill would require that division issue revoked quota alcoholic beverage licenses through the double random drawing process authorized by s. 567.19, F.S.

The bill bars the issuance of a revoked alcoholic beverages license that is encumbered with a lien or security interest until the 180-day period to enforce a lien or security interest has elapsed or the enforcement proceeding is final.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The language in sections 1 and 3 and this bill are substantially similar to the provisions in the amendment adopted by the Senate Criminal Justice Committee to the committee substitute for SB 326.

With the exception of providing a proper name, the language in section 4 of this bill is identical to the language in the committee substitute for SB 326.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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